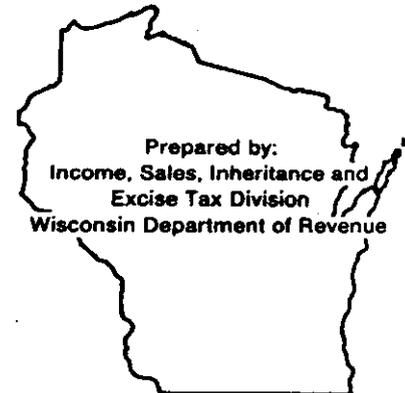


# WISCONSIN TAX BULLETIN

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## NEW TAX LAWS TO BE ADDRESSED IN SPECIAL ISSUE

Various tax bills were still pending before the Wisconsin Legislature at the time this Bulletin went to press. If any of these bills become law, a special issue of the *Wisconsin Tax Bulletin* will be published to provide information about the tax law changes. See page 2 for a summary of the drug tax legislation passed by the Legislature and signed by the Governor.

## FOUR NEW COUNTIES ADOPT COUNTY TAX

On April 1, 1990, the 1/2% county sales and use tax begins in four new counties: La Crosse, Monroe, Shawano, and Waushara. The counties of Ashland, Barron, Buffalo, Burnett, Columbia, Door, Dunn, Iowa, Jackson, Langlade, Lincoln, Marathon, Marquette, Oneida, Pierce, Polk, Portage, Richland, Rusk, Sawyer, St. Croix, Vilas, Walworth, and Waupaca had previously adopted the county tax. The Tax Report included with *Wisconsin Tax Bulletin* 65 (January 1990) explains how this new county tax applies to retailers and other persons.

On pages 18 and 19 of this Bulletin is a copy of the March 1990 Tax Report which was sent in late March to all retailers who have a seller's permit.

### In This Issue

	Page
New Tax Laws to Be Addressed in Special Issue .....	1
Four New Counties Adopt County Tax ..	1
Speakers Bureau .....	1
High School Students Learn About Wisconsin Taxes .....	1
Certain Claimants May Still File a 1988 Farmland Preservation Credit Claim ..	2
Voice Response System to Answer Refund Inquires .....	2
Drug Tax Becomes Effective May 1, 1990 .....	2
Department Denies Claims for Refund Based on Davis Decision .....	4
Application to Ascertain Net Tax Paid or Payable .....	4
Refund Questions .....	5
1990 Estimated Tax Requirements for Individuals, Estates and Trusts ....	5
Extensions of Time to File for Individuals .....	5
Gift Tax Reports Due April 16 .....	5
Information or Inquiries? .....	6
We are Frequently Asked... ..	6
Wisconsin Tax Bulletin Includes Index .	6
Do You Have Suggestions for 1990 Tax Forms .....	6
Appleton Accountant Sentenced for Violation of State Tax Laws .....	6
New ISI&E Division Rules and Rule Amendments in Process .....	7
Report on Litigation .....	8
Tax Releases	
Individual Income Taxes .....	12
Sales/Use Taxes .....	14
All Taxes .....	15
Private Letter Rulings .....	15
March Tax Report .....	18
Index to Issues 1-66 .....	22

## SPEAKERS BUREAU

The department's Speakers Bureau provides speakers to professional organizations and community groups throughout Wisconsin. If you would like a speaker to address your group, please call the Speakers Bureau at (608) 266-8640.

Subjects that may be discussed include updates on income, corporate and sales tax laws, audit procedures, common taxpayer errors, how tax laws apply to exempt organizations, sales tax problems of contractors, manufacturers, etc.

Note: There is no charge for services provided by the Speakers Bureau.

## HIGH SCHOOL STUDENTS LEARN ABOUT WISCONSIN TAXES

Do you have a son or daughter in high school? If so, they may be able to prepare their own Wisconsin income tax return for 1989. In January, 1990, over 1,600 packets were sent to high school teachers for use in instructing students to prepare their Wisconsin income tax returns.

Forms and schedules have been provided for students to prepare their own income tax returns during the class room sessions. This is the first year the Department of Revenue is joining the IRS in providing

materials to schools for teaching students about Wisconsin income taxes.

## CERTAIN CLAIMANTS MAY STILL FILE A 1988 FARMLAND PRESERVATION CREDIT CLAIM

The farmland preservation credit law was amended by 1987 Wisconsin Act 399, effective for claims filed for taxable year 1988 and thereafter, to require that a claimant's property taxes for the preceding year on the property for which a claim is made, must be paid in order to qualify for the credit (sec. 71.59(1)(b), Wis. Stats. (1987-88)). Initially this new eligibility requirement was interpreted as applying to all claimants.

Later it was determined that the requirement applied only to claimants using the "current year's law" method of filing. Claimants with a farmland preservation agreement executed prior to May 17, 1988, and who elect to use the "prior year's law" method of filing, are not subject to the new eligibility requirement. A Tax Release appeared in *Wisconsin Tax Bulletin* 63, October 1989, page 17, indicating that a claimant with unpaid 1987 property taxes and with a farmland preservation agreement executed before May 17, 1988, could file a 1988 farmland preservation credit claim, using the law in effect at the time the agreement was executed.

An article also appeared in a Department of Agriculture, Trade, and Consumer Protection publication. That article stated that claimants with an agreement and unpaid 1987 property taxes who did not file a 1988 farmland preservation credit claim because of the initial interpretation could file an amended 1988 tax return to claim the credit under the "prior year's law" method, provided that the amended return was filed by December 31, 1989. However, that article was not published until January 17, 1990.

Since the change in position described above occurred late in 1989, the Department of Revenue will honor 1988 (and 1988F) farm-

land preservation credit claims filed after the statutory due date (January 2, 1990, for calendar year claims) as timely filed claims if:

- a. The claim is filed under the "prior year's law" method,
- b. It is filed by a claimant whose 1987 property taxes were unpaid as of the statutory due date of the 1988 (or 1988F) claim (January 2, 1990, for calendar year claims), and
- c. The claimant has a farmland preservation agreement executed before May 17, 1988.

The extension of time to file these claims will expire 4 years after the statutory due date of the 1988 (or 1988F) claim (for example, the extension will expire on December 31, 1993, for a calendar year 1988 claim).

## VOICE RESPONSE SYSTEM TO ANSWER REFUND INQUIRIES

Beginning in April 1990, an automated voice response unit (VRU) will be answering telephone calls to the department's refund inquiry telephone number, (608) 266-8100.

Callers with touch-tone telephones will be prompted to enter their social security number and the dollar amount of the refund claimed on their return. Callers with rotary or push button rotary (pulse) telephones will be automatically transferred to a department employe who will make the necessary entries to the VRU. The VRU will then respond to the inquiry.

Rotary and push button rotary callers may only get assistance during regular business hours while touch-tone callers may get assistance from 6:00 a.m. to 1:00 a.m. seven days a week.

If the VRU does not have enough information from the department's computer income tax history file to respond to the

inquiry, employe intervention is required. Callers phoning during business hours will automatically be transferred to a department employe for assistance. Callers phoning outside business hours will be given a telephone number and hours during which they may call for assistance.

## DRUG TAX BECOMES EFFECTIVE MAY 1, 1990

As a result of recent legislation (1989 Wisconsin Act 122), Wisconsin will begin to impose a tax on dealers who acquire or possess marijuana or other controlled substances.

This new "drug tax" takes effect on May 1, 1990. Tax stamps or labels will be sold to dealers who must affix them to their products as proof of payment. There are substantial civil and criminal penalties for possession of marijuana or other controlled substances which do not bear evidence of the tax paid.

The Department of Revenue's Inheritance and Excise Tax Bureau will administer the "drug tax". Inquiries concerning the new "drug tax" should be directed to the Inheritance and Excise Tax Bureau, 4622 University Avenue, Madison, Wisconsin 53702, or telephone (608) 266-6701.

Following are descriptions of the major tax provisions in 1989 Wisconsin Act 122. All of the following provisions become effective May 1, 1990.

### 1. Tax on Controlled Substances (Create secs. 139.87 and 139.88.)

An occupational tax is imposed on dealers of controlled substances (as defined in sec. 161.04(4) and (5), Wis. Stats.). A "dealer" is any person who, in violation of ch. 161, possesses, manufactures, produces, ships, transports, delivers, imports, sells or transfers to another person: (a) more than 42.5 grams of marijuana, (b) more than 7 grams of any other controlled substance, or (c) if the substance is not sold by weight but in a manufactured dosage form, 150 milligrams of a controlled substance. The tax does not

apply to a person who lawfully possesses marijuana or another controlled substance.

The tax is imposed on dealers at the following rate:

- a. \$3.50 per gram or part of a gram of marijuana, whether pure or impure, measured when in the dealer's possession.
- b. \$200 per gram or part of a gram of other controlled substances, whether pure or impure, measured when in the dealer's possession.
- c. \$400 per 15 milligrams of a controlled substance if the substance is sold in a manufactured dosage form.

## 2. Proof of Payment (Create sec. 139.89.)

In administering the controlled substances tax, the Department of Revenue is required to create a uniform system of providing, affixing, and displaying stamps, labels, or other evidence that the tax has been paid. No dealer may possess any controlled substance unless the tax has been paid on it, as evidenced by a stamp or other official evidence.

The controlled substance tax is due and payable immediately upon acquisition or possessing the marijuana or controlled substance in Wisconsin, and the department at that time has a lien on all of the taxpayer's property. Late payments are subject to interest at the rate of 1% per month or part of a month. Stamps or other evidence of payment are not transferable to another person.

## 3. Confidentiality (Create sec. 139.91.)

The Department of Revenue may not reveal facts obtained in administering the controlled substances tax. However, the department may publish statistics that do not reveal the identities of dealers.

Dealers may not be required to provide any identifying information in connection with the purchase of stamps. No information obtained by the department may be used against a dealer in any criminal proceeding unless that information has been independently obtained, except in connection with a

proceeding involving possession of untaxed marijuana or controlled substances or taxes due from the dealer.

## 4. Examination of Records (Create sec. 139.92.)

The Department of Revenue may examine or cause to be examined, any books, papers, records, or memoranda that may be relevant in determining the amount of tax that should have been paid, determining whether or not the dealer should have paid taxes, or in collecting the tax. The department may also require the attendance of any person having knowledge or information that may be relevant, compel the production of documents by persons required to attend, take testimony on matters material to the determination, issue subpoenas, and administer oaths and affirmations.

## 5. Administration of Controlled Substances Tax (Create sec. 139.93.)

The taxes, penalties, and interest imposed under these provisions are to be assessed, collected, and reviewed as are income taxes under ch. 71 of the Wisconsin Statutes.

In cases where the Department of Revenue finds that the collection of the tax is jeopardized by delay, the department is authorized, upon notification to the taxpayer in person or by registered mail to the last known address, to demand immediate payment of the taxes, penalties, and interest due and to proceed under the statutory provisions relating to the collection of income and franchise taxes. If the taxes, penalties, and interest are not immediately paid, the department is permitted to seize any of the taxpayer's assets. Seizure of the assets does not nullify the taxpayer's right to a hearing on the department's determination that the collection would be jeopardized by delay, nor does it nullify the taxpayer's right to post a bond.

Within 5 days after notifying the taxpayer, the department is required to provide the taxpayer in writing with its reasons for proceeding under these provisions. The warrant of the department shall not issue and the department may not proceed further under these provisions if, within 10 days after notice of the intent to proceed is given, the taxpayer furnishes to the department a

bond conditioned upon the payment of the additional tax and interest. The taxpayer has 20 days after the initial notice by the department to appeal to the department the determination that the collection will be jeopardized by delay. Any statement that the department files may be admitted into evidence and is prima facie evidence of the facts it contains. Taxpayers may appeal adverse determinations by the department to the Dane County Circuit Court.

The taxes and penalties assessed by the department are presumed to be valid and correct. The burden is on the taxpayer to show their invalidity or incorrectness. The Department of Revenue may request the Department of Administration to sell all assets which are seized.

No court may issue an injunction to prevent or delay the levying, assessment, or collection of the taxes or penalties.

The duly authorized employees of the department have all necessary police powers to prevent violations.

## 6. Refunds (Create sec. 139.94.)

Excess taxes are to be refunded with interest at the rate of 0.75% per month.

If the Department of Revenue has sold property to obtain taxes, penalties, and interest assessed and those taxes, penalties, and interest are found not to be due, the department is required to give the former owner the proceeds of the sale when that determination is final.

## 7. Penalties (Create secs. 139.90 and 139.95.)

Any dealer who possesses marijuana or a controlled substance for which a tax has not been paid, in addition to the tax due, is subject to a penalty equal to the amount of the tax due and a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both. Acquisition of stamps or other evidence that the tax under sec. 139.88, Wis. Stats. has been paid does not create immunity for a dealer from criminal prosecution for possessing controlled substances in violation of ch. 161.

Any person who falsely or fraudulently

makes, alters, or counterfeits any stamp or procures or causes the same to be done or who knowingly utters, publishes, passes, or tenders as true any false, altered, or counterfeit stamp or who affixes a counterfeit stamp to marijuana or a controlled substance or who possesses marijuana or a controlled substance to which a false, altered, or counterfeit stamp is affixed may be fined not more than \$10,000 or imprisoned from one to 10 years or both.

**8. Use of Revenue (Create secs. 20.505 (6)(hm) and 139.96.)**

All monies received from the tax on controlled substances, including penalties, shall be allocated to the state or local law enforcement agency that made the arrest associated with the revenue.

**DEPARTMENT DENIES CLAIMS FOR REFUND BASED ON DAVIS DECISION**

On March 12, 1990, the Department of Revenue mailed denial notices to individuals who filed claims for refund of Wisconsin individual income taxes paid on federal retirement income for years prior to 1989. The department acted on the claims at this time to comply with a statutory requirement that the department act on claims for refunds within one year from the time they are received by the department.

The denial is based on the department's position that last year's U.S. Supreme Court decision in *Davis v. Michigan Department of Treasury* does not apply to tax years prior to 1989. Although litigation is pending, to date, no court has ruled against the department's position.

The denial notice mailed to claimants informs them of their appeal rights and includes a simple appeal form and pre-addressed envelope to simplify the appeal process for them.

The department has also notified various interested groups, such as organizations that serve the elderly, of this action.

Taxpayers or others who have questions

about this or related matters are advised to call the department at (608) 266-2772.

A copy of the denial notice sent to claimants appears on page 20 of this Bulletin.

**APPLICATION TO ASCERTAIN NET TAX PAID OR PAYABLE**

**Who May Apply?**

A Wisconsin resident may obtain the net Wisconsin income tax, Wisconsin franchise tax, or Wisconsin gift tax reported as paid or payable of another person or corporation as provided by sec. 71.78(2), Wis. Stats. (1987-1988). This information is not available to any nonresident, or to any resident who is making the request for such information for the use or benefit, directly or indirectly, of a nonresident person or firm or a foreign corporation, except to the extent that similar information in the state of residence of such person or firm or the state of incorporation of such foreign corporation is made available to residents of Wisconsin or Wisconsin corporations.

**What is Net Tax Reported as Paid or Payable?**

"Net tax reported as paid or payable" is the "Net Tax" reported on an individual income tax return (Form 1, 1A, WI-Z, INPR), fiduciary return (Form 2), and corporation franchise or income tax return (Form 4, 5), less any credit for taxes paid to another state. If an amended return has been filed, net tax reported as paid or payable is the "Net Tax," less any credit for taxes paid to another state, reported on the amended individual income tax return (Form 1X) or corporation franchise or income tax return (Form 4X). If an adjustment notice has been issued, net tax reported as paid or payable is the "Net Tax," less any credit for taxes paid to another state, as computed on the adjustment notice. In the cases of amended returns and adjusted returns, the net tax line from the original return is no longer used to determine the net tax reported as paid or payable. (Note: Net tax paid or payable shall be reduced by the

special one-time property tax/rent credit refunded for 1987 and 1988.)

For 1986 and prior years, Wisconsin law provided for a separate minimum tax that was added to net tax reported on an individual income tax return. A requester may not obtain this minimum tax amount reported as paid or payable by an individual. For 1987 and thereafter, Wisconsin law provides an alternative minimum tax which is included in the computation of net tax reported as paid or payable on an individual income tax return. The "net tax" amount disclosed for 1987 and subsequent years will include any alternative minimum tax reported as paid or payable.

**How Does A Requester Apply?**

A requester must complete Form P-100, "Application To Ascertain Wisconsin Net Income Tax Reported As Paid or Payable." A copy of this application is on page 21. The application may be mailed to the Department of Revenue, Post Office Box 8903, Madison, Wisconsin 53708. The requester may also apply in person at the Department of Revenue office at 4638 University Avenue, Madison.

Form P-100 is separated into three sections. The first section must always be completed by the requester. The second section must be completed by the requester only when he or she does not appear in person at the department's office at 4638 University Avenue, Madison. The third section is completed by the department when the requester appears in person at the Madison office.

A requester may apply in person at the Madison office from 7:45 a.m. to 4:30 p.m. on weekdays. A requester who applies in person must present an acceptable form of identification (e.g., a driver's license). The Custodian of Files in the Department of Revenue will provide the net tax information to a requester who applies in person as soon as practicable after receiving the application. Since the return of the person or corporation subject to disclosure may be located in one of the department's district or branch offices, it is not always possible for the custodian to respond immediately. The custodian will advise the requester if